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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the matter of

Commission request for comment on  
the meaning of the term "technology  
neutral"

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)  
) DA 97-2234  
) CC 92-237  
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To: The Commission

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in response to the *Public Notice* in the above-referenced matter, which requests comment on the meaning of the term "technology neutral" in the context of area code relief.<sup>1/</sup> As shown below, the Commission should adopt a definition of "technology neutral" that respects the significant technological differences among telecommunications providers, rather than permitting regulators to adopt a "one size fits all" approach in an effort to stave off area code relief.

The Commission's request for comment is particularly appropriate now because state regulators across the country are now addressing what steps can be taken to forestall area code relief. Vanguard's interest in this proceeding is particularly strong because approximately half of its 625,000 subscribers are in Pennsylvania, one of the states that is considering mechanisms, such as "transparent" overlays and number pooling, that the Pennsylvania PUC believes might reduce the need for area code relief.

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<sup>1/</sup> See "Common Carrier Bureau Seeks Comment on North American Numbering Council Letter Seeking Clarification of the Term 'Technology Neutral,'" *Public Notice*, DA 97-2234, rel. Oct. 20, 1997 (the "*Public Notice*").

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The efforts of the Pennsylvania Public Utilities Commission and other state commissions across the country emphasize the importance of grounding the Commission's determinations in this matter in the basic concerns that support all numbering policy. First, numbering administration must ensure that all providers have access to the numbering resources they need.<sup>2/</sup> Second, numbering administration must not discriminate against any providers, not just in the availability of numbers, but also in the customer perception of the provider. Technological neutrality, if it is to have any meaning, must serve both of those goals.

Thus, it is not technology neutral to adopt a policy that effectively deprives certain providers of access to telephone numbers. For instance, mandatory number pooling, if applied at a time when some carriers, but not others, have implemented permanent number portability, effectively will deprive the carriers that have not implemented portability of access to numbering resources. Similarly, if a "transparent" overlay turns out not to be transparent to customers of certain providers or if it results in some providers losing functionalities that other providers do not lose, then it is not technology neutral to require all

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<sup>2/</sup> Although this issue is not directly posed by the *Public Notice*, Vanguard notes that one important question raised by state efforts to avoid area code relief is whether relief plans will be put into effect in time to avoid number exhaust. For that reason, the Commission may wish to clarify that any number conservation plans adopted by state regulators also must include area code relief plans that will be implemented when it becomes apparent that exhaust is going to occur.

providers to take numbers from the "transparent" code.<sup>3/</sup> Such "one size fits all" policies, which do not account for technology differences, cannot be upheld.<sup>4/</sup>

Regulators can, however, adopt policies that acknowledge the technological differences among providers. In the case of number pooling, it is reasonable to require those carriers that can engage in pooling to do so, while permitting those providers that cannot use pooling at present to continue to obtain their numbering resources via conventional means.<sup>5/</sup> This approach would not necessarily have an adverse effect on conservation: *cellular providers, for instance, are notably efficient users of numbering resources, with average fill rates of 75 to 80 percent for their NXX codes.*<sup>6/</sup> This efficiency is a result of the wide area service that cellular providers offer, which allows them to spread an NXX code over a much larger territory than landline carriers, and of the high growth rate that cellular carriers continue to experience.

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<sup>3/</sup> This is the case for cellular providers. The customer's handset will show the number from the "transparent" overlay, not the number the customer has been told that she is assigned. It also appears likely that cellular customers assigned numbers from a transparent overlay will not be able to receive call-backs from public safety personnel after making 911 calls when they are roaming.

<sup>4/</sup> This is not to say that regulators must impose identical burdens on all carriers, but only that technological differences must be acknowledged. Thus, it is not unduly burdensome to require an ILEC to bear the costs of modifying all of its switches to accommodate area code relief, even though the ILEC will have greater costs than other providers that have fewer switches. By contrast, modifying cellular switches and handsets to make a transparent overlay truly transparent would be difficult at best and, more likely, impossible without major changes in both switch and handset technology.

<sup>5/</sup> While such a policy would exempt cellular providers from pooling until mid-1999, it also would have the effect of exempting landline carriers that are not otherwise required to offer number portability.

<sup>6/</sup> By comparison, the Pennsylvania PUC has found that average fill rates for all NXX codes in Pennsylvania are well below 50 percent.


In all cases, the basic inquiry must be whether a regulator's decision recognizes and accounts for the differences in the technologies deployed by the affected providers. So long as a decision meets that test and ensures that numbering resources actually are available to all providers, then it should be considered technology neutral. If, however, a decision imposes excessive costs on some providers but not others, requires significant modifications to the operations or networks of some providers but not others, or makes numbering resources available from a practical point of view to some providers but not others, then the decision cannot be deemed technologically neutral and, therefore, is unlawful.

The Commission also must not lose sight of the reason Vanguard and other providers need access to numbering resources. Without numbers, Vanguard cannot serve its customers; if Vanguard has limited access to numbering resources or access only to numbering resources that do not permit it to provide a full range of services, its ability to serve its customers also will be impaired. Indeed, without technologically neutral numbering policies that ensure that all providers have ongoing access to numbering resources, customers will be deprived of their opportunity to purchase the telecommunications services they want and to obtain those services from their providers of choice. Such a result would be contrary to the Commission's policies and the intent of the Telecommunications Act of 1996 to promote consumer choice and the benefits of competition. Thus, it is critical that the Commission adopt a definition of "technology neutral" that will further these goals.

For all these reasons, Vanguard Cellular Systems, Inc. respectfully requests that the Commission act in accordance with these comments.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By:   
Raymond G. Bender, Jr.  
J.G. Harrington

Its Attorneys

Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2818

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**CERTIFICATE OF SERVICE**

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 29th day of October, 1997, I caused copies of the foregoing "Comments" to be served via hand-delivery to the following:

Jeannie Grimes  
Common Carrier Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 235  
Washington, DC 20554

ITS  
1231 20th Street, N.W.  
Washington, DC 20036

  
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Tammi A. Foxwell